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In re Application of	:	
EISENBACH-SCHWARTZ et al	:	DECISION ON
Application No.: 10/577,901	:	
PCT No.: PCT/IL2004/000441	:	
Int. Filing Date: 23 May 2004	:	PETITION UNDER
Priority Date: 22 May 2003	:	
Attorney Docket No.: EIS-SCHWARTZ 29A	:	
For: DOPAMINE AND AGONISTS AND ...	:	37 CFR 1.181
REGULATORY T CELLS	:	

This decision is in response to the "PETITION TO WITHDRAW HOLDING OF ABANDONMENT," filed on 22 July 2009 which is being treated as a petition under 37 CFR 1.181. Applicants have submitted, inter alia, a copy of the 28 February 2007 PTO stamped itemized postcard receipt. The itemized postcard lists, inter alia, the following item: Missing Parts Response with Declaration and Sequence Listing with Disk.

### **BACKGROUND**

On 22 November 2005, applicants filed a transmittal letter for entry into the national stage in the United States which was accompanied by, inter alia, the requisite basic national fee as required by 35 U.S.C. 371(c)(1). Applicants, however, did not satisfy the requirement set forth by 35 U.S.C. 371(c)(4) because no executed Declaration or Oath was provided with the transmittal letter at such time.

On 01 February 2007, the United States Designated/Elected Office (DO/EO/US) mailed a "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)" (Form PCT/DO/EO/905) which informed applicant, inter alia, that an "Oath or Declaration of the inventors, in compliance with 37 CFR 1.47(a) and (b), identifying the application by the International application number and international filing date, ... and that a copy of the Sequence Listing in computer readable form has not been submitted as required by 37 CFR 1.821(e)." The notice indicated that the items above must be submitted within two (2) months from the date of this notice or by 32 months from the priority date, whichever is later, in order to avoid abandonment of the national stage application.

On 28 February 2007, applicants filed an executed declaration and a sequence listing in computer readable form.

On 22 May 2009, the DO/EO/US mailed a "NOTIFICATION OF ABANDONMENT" (Form PCT/DO/EO/909) which indicated that the application is abandoned because applicant has failed to respond to the notification of MISSING REQUIREMENTS (Form PCT/DO/EO/905) mailed 02/01/2007 within the time period set therein.

In response to the "NOTIFICATION OF ABANDONMENT" mailed on 22 May 2009, applicants submitted on 22 July 2009 the instant petition to vacate holding of abandonment. In support of the request, applicants have provided a copy of the returned/stamped receipt card acknowledging a receipt date of 28 February 2007, within the time period of response.

On the 06 August 2009, the USPTO indicated that the Sequence Listing was accepted.

### **DISCUSSION**

Applicants' present petition accompanied by a copy of the following documents, filed purportedly with the USPTO as indicated in the stamped postcard:

- (1) Fees 965.00
- (2) Missing Parts Response with Decl
- (3) Sequence Listing with Disk

The postcard lists the above items and bears a USPTO date of stamp as February 28, 2007.

MPEP 503 provides:

A postcard receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the PTO of all the items listed thereon on the date stamped thereon by the PTO.

Applicant's postcard is accepted as *prima facie* that a Declaration and a sequence listing computer readable form were deposited with the U.S. Patent and Trademark Office on 28 February 2007.

Accordingly, the date of receipt for the Declaration and the sequence listing in computer readable form is 28 February 2007, which is considered timely. Accordingly, the instant application has been improperly abandoned.

### **DECISION**

The petition under 37 CFR 1.181 is **GRANTED**. The Notification of Abandonment (PCT/DO/EO/909) mailed 22 May 2009 was in error and is hereby **VACATED**.

The application is being returned to the United States Designated/Elected Office (DO/EO/US) for processing in accordance with this decision. The 35 U.S.C. § 371(c)(1), (c)(2), and (c)(4) date is **28 February 2007**.



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